

WM. D. GAINES AND WM. M. KING.

---

DECEMBER 30, 1831.

---

MR. CLAY, from the Committee on the Public Lands, made the following  
**REPORT:**

*The Committee on the Public Lands, to whom was referred the petition of Wm. M. King, of Jackson County, Alabama, beg leave to report:*

That the petitioner claims title to a tract of land situated in the county and State aforesaid, which was granted to one Thomas Jones, the head of an Indian family, under provisions of the treaties of 1817 and 1819, between the United States and the Cherokee Indians. Said Jones lived on his said reservation till 1820 or 1821, when, the petitioner alleges, the white people, who had settled around him, became inimical to him, threw down his houses, destroyed his fences, and so abused and maltreated him, personally, that he was compelled to abandon it for a time. Meanwhile, he (Jones) lived with his children, in the same county, till 1822, when William D. Gaines, the petitioner's father-in-law, bought of, and paid him a full and valuable consideration for the said reservation. It further appears, that Gaines purchased of Jones' children, their interest, they being all of full age, and took their relinquishment; and also purchased, and obtained from the wife of Jones her right of dower. The petitioner bought of Gaines about 500 acres of the tract, and has placed, on the part purchased by him, permanent and valuable improvements, consisting of a good dwelling-house, out-houses, and a tan-yard, amounting in value to about one thousand dollars, which, he says, has exhausted all his capital, except his interest in the land. The petitioner further states, and substantially proves, that between three and four hundred acres of the tract by him purchased of Gaines, lies in the mountain, and is *wholly unfit for cultivation*.

The sale from Jones, and his wife and children, to William D. Gaines, appears by their deed; Mrs. Jones' acknowledgment separate and apart from her husband; and proof of its execution, as to her and the other parties, according to the laws of Alabama: copies of which deed, and certificates of acknowledgment, probate and registration, are certified by the clerk of the county court of the said county of Jackson, under his private seal, there being no seal of office. The sale from Gaines to the petitioner, is proved by the original deed between the parties, with the same clerk's certificate of its acknowledgment by Gaines, and its registration. The consideration paid by

Gaines to Jones, was, according to the proof, about three hundred dollars, besides binding himself to maintain and support Jones during his natural life. The proof further shows, in substance, that Gaines took Jones to live with him, and treated him as a member of his family, until he went on a visit to his friends and relations in the southern part of Alabama, where he was taken sick, and died. The consideration paid by King, the petitioner, to Gaines, was about five hundred and fifty dollars. It also appears, by proof, that the reservation lies between two mountains, one-half or more being in the mountain, and the other lying in a creek swamp, and being of little value. The maltreatment of Jones, as stated by the petitioner, and his death on a visit to the southern part of the State, is substantially proved.

The petitioner asks a confirmation of his title, under the apprehension that his right might be affected by Jones' temporary removal, or by his death when off the reservation. Under the 8th article of the treaty of 1817, a person, to whom a reservation was granted, became entitled to a "life estate, with a reversion (remainder) in fee simple to his children, reserving to the widow her dower," with a proviso "that, if any of the heads of families, for whom reservations might be made, should remove therefrom, then, in that case, the right to revert to the United States."

A removal, to occasion forfeiture, must have been voluntary, and not produced by coercion, threats, or fear, and indicating an intention wholly to abandon the possession and occupancy of the land. Nor could the temporary absence of a person claiming a reservation, on a visit, accompanied by his death, while so absent, defeat his right, or that of his children. It is, moreover, believed that the wife of Jones, and his children, being of full age, could sell and convey their interest, under circumstances of fairness, for an adequate consideration. In this case, there is no appearance of unfairness; and, taking into view the inferior quality and value of the land, the consideration given by Gaines, seems to, have been adequate. The proof shows that, since the sale, the family of Jones, including his wife and children, have appeared satisfied with its terms; and, it does not appear that any discontent, on their part, has been manifested up to the present time. The committee, therefore, beg leave to report herewith a bill for the petitioner's relief.